UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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TREELINE 990 STEWART PARTNERS LLC,

Plaintiff,

vs.

RAIT ATRIA, LLC, RAIT PARTNERSHIP, L.P., RAIT GENERAL, INC. and 990 STEWART AVENUE INVESTORS LLC,

Defendants.

990 STEWART AVENUE INVESTORS, LLC,

Interpleader Plaintiff,

vs.

TREELINE 990 STEWART PARTNERS LLC, RAIT ATRIA, LLC, RAIT PARTNERSHIP, L.P. and RAIT GENERAL, INC.,

Interpleader Defendants.

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Civil Action

No. 10-cv-5234 (JS)(ETB)

DECLARATION IN OPPOSITION TO THE RAIT DEFENDANTS' MOTION TO DISMISS AND/OR DROP DEFENDANT 990 STEWART AVENUE INVESTORS, LLC FROM THE ACTION

and

IN SUPPORT OF CROSS-MOTION

DECLARATION OF MICHAEL I. SCHOR

MICHAEL I. SCHOR, declares as follows under the penalty of perjury:

1. I am an attorney duly admitted to practice before the Courts of the State of New York. I am the Vice President of 990 Stewart Avenue Investors LLC ("990 SAI"), one of the defendants and the interpleader plaintiff, herein. I am personally familiar with the facts and proceedings herein and submit this Declaration in opposition to the motion of defendants RAIT Atria, LLC, RAIT Partnership, LP, RAIT General, Inc. (collectively, "RAIT" or the "RAIT Defendants") to dismiss the complaint and to strike 990 SAI as a property party defendant. I also submit this Declaration in support of the Cross-Motion of 990 SAI to pay certain monies into

Court pursuant to Federal Rule of Civil Procedure 67, and for an Order authorizing defendant 990 SAI to submit financial reports only to the Court and not to the RAIT Defendants.

Introduction

2. In addition to my role at 990 SAI, I am Vice President of Treeline 990 Stewart Partners LLC ("Treeline 990"), the plaintiff herein. Treeline 990 is the "Common Capital Member" and the "Managing Member" of 990 SAI, as those terms are defined in the Operating Agreement of 990 Stewart Avenue Investors LLC (the "Operating Agreement") (a copy of which is annexed hereto as Exhibit "A"). Defendant RAIT Atria, LLC is the "Preferred Capital Member" of 990 SAI.

3. Notwithstanding RAIT's objection now as to the dual roles C. Glenn Schor and I have with Treeline 990 and 990 SAI (*see* RAIT Defendant's Memorandum of Law, p.14, footnote 6), this structure has been well known to RAIT for some time. Indeed, paragraph 20 of the Operating Agreement specifically acknowledges that C. Glenn Schor and I have positions with other entities associated with 990 SAI and waives any claim of conflict.

4. In my role as Vice President of Treeline 990, I verified the original Complaint filed in State court in this action and the Amended Complaint subsequently filed in this Court. I also submitted an affidavit in the State court proceeding in support of Treeline 990's motion to pay disputed funds into Court. I submit this Declaration in my role as Vice President of 990 SAI.

The Transactions at Issue

5. The initial transaction underlying this dispute is, in substance, a loan made by RAIT with respect to an office building located at 990 Stewart Avenue, Garden City, New York (the "Building").

6. I participated in the negotiation of the underlying loan, as well as the negotiations referred to in the Declaration of C. Glenn Schor dated January 14, 2011 (hereinafter referred to as the "C. Glenn Schor Declaration"). I affirm his description of the negotiations with the RAIT Defendants. As set forth in said Declaration, these negotiations culminated in an agreement between plaintiff Treeline 990 and RAIT, whereby RAIT agreed to sell to Treeline 990 the loan it made at a 37.5% discount. In other words, Treeline 990 agreed to buy back the loan from RAIT at a price equal to 62.5% of the face amount of the loan. (*See* Amended Complaint paragraphs 16-32; C. Glenn Schor Declaration, paragraphs 11-28.)

The Monthly Interest Payments

7. With respect to the interest due on the underlying loan, each month RAIT sends an invoice to defendant 990 SAI demanding the payment of such interest. Each month, 990 SAI then directs its wholly owned subsidiary, Treeline 990 Stewart LLC – the owner of the Building – to issue a check for the interest payment to RAIT. Treeline 990 Stewart LLC has a similar name, but is not the same company, as the plaintiff Treeline 990. In fact, Treeline 990 is the Common Capital Member of 990 SAI, and Treeline 990 Stewart LLC is a wholly-owned subsidiary of 990 SAI, whose sole purpose is to own and operate the Building. To avoid confusion, Treeline 990 Stewart LLC will be referred to herein as the "Property Owner."

8. The course of conduct between the parties since the loan was made has been as follows: Each month RAIT demands payment from 990 SAI. The Property Owner receives any revenue (such as rent) from the Building and, as a matter of convenience, 990 SAI directs the Property Owner on a monthly basis to make interest payments directly to RAIT, rather than having the Property Owner distribute funds to 990 SAI and then having 990 SAI issue a corresponding check to RAIT. This has been the practice since the inception of the loan with

RAIT and RAIT has never, to my knowledge, objected to this practice or rejected any check tendered for interest by the Property Owner at the direction of 990 SAI.

9. In my affidavit submitted in the State court proceeding on the motion of Treeline 990 to deposit funds into Court, I stated that Treeline 990 "has made monthly payments to defendant in the amount of $67,812.50." In its role as the Managing Member of 990 SAI, Treeline 990 directs 990 SAI to make the monthly interest payments to RAIT. It is more precise, however, to say that 990 SAI makes such payments, through the Property Owner, 990 SAI's wholly-owned subsidiary.

10. We assume that RAIT would object if Treeline 990 directed 990 SAI not to make the payments to RAIT. Therefore, 990 SAI is a proper and necessary party defendant, and is a proper interpleader plaintiff.

Request to Deposit Into Court

11. To date, 990 SAI has continued to cause the Property Owner to make the payments to RAIT, despite the pendency of this action, and Treeline 990 has taken no action to the contrary. However, because RAIT agreed to sell the loan to Treeline 990, RAIT is not entitled to any interest payments on its loan, nor should RAIT any longer be privy to the financial affairs of Treeline 990, 990 SAI, or any property investment of these companies.

12. 990 SAI does not wish to be exposed to any potential liability for paying RAIT interest to which RAIT may not be entitled. Further, 990 SAI understands that RAIT may be facing serious financial difficulties and, therefore, is not confident that if 990 SAI continues to pay the monthly interest on the loan to RAIT, that RAIT will be able to repay 990 SAI for interest improperly received by RAIT. Moreover, upon information and belief, the subject loan has been effectively sold by RAIT as a "collateralized debt obligation" or CDO, in whole or part,

to third party investors. Thus, RAIT itself may not be able to recover the interest payments from these third parties should it be required to refund such sums to 990 SAI. Similarly, 990 SAI does not wish to provide any further financial reporting to RAIT, as this is proprietary information to which RAIT should not be privy if RAIT no longer owns the loan.

13. For the foregoing reasons, 990 SAI requests relief from this Court as an interpleader under Rule 22 of the Federal Rules of Civil Procedure. 990 SAI does not know which entity the Court will determine is entitled to the monthly payments. Under these circumstances, it is respectfully submitted that 990 SAI should be permitted, pending the outcome of this litigation, to pay the monthly interest payments into Court pursuant to Rule 67 of the Federal Rules of Civil Procedure, and to make all financial reporting to the Court to be held by the Court pending the outcome of this action.

15. A similar application was made to the Supreme Court of the State of New York, Nassau County under applicable New York State law, but the application was not determined as RAIT removed the matter to this Court.

16. Rule 67 provides the Court with full authority to provide defendant 990 SAI the relief requested.

17. Accordingly, 990 SAI respectfully requests that the RAIT defendant's motion be denied and the Cross-Motion of 990 SAI be granted.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: January 28, 2011

MICHAEL I. SCHOR